

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6426 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy
of the judgement? No
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

LOK ADHIKAR SANGH

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner
SHRI DP JOSHI, AGP, for Respondent No. 1
Respondents Nos. 4 to 7 served 7

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 26/03/98

C.A.V. JUDGMENT (Per A.R. Dave, J.)

Lok Adhikar Sangh has filed this petition by way
of public interest litigation so as to bring to notice of

this Court an incident of police atrocity. It has been submitted in the petition that Shri Kalyansinh Parmar, a citizen residing at Vallabhipur, was abused, beaten, handcuffed and with a rope tied, was paraded in town Vallabhipur. His hair were cut with an intention to insult him and degrade him. He was beaten in such a manner that his right hand was fractured.

2. Learned Advocate Shri Girish Patel appearing for the petitioner Sangh has submitted that the petitioner Sangh is aggrieved because of violation of fundamental rights of Shri Kalyansinh Parmar who was not only involved in a false prohibition case but was also beaten in such a manner in public that along with other injuries his hand was also fractured. He has submitted that Lok Adhikar Sangh is a human rights organisation committed to the protection of civil liberties and democratic rights of the people and particularly of the poor and the downtrodden in the State of Gujarat. Whenever any member of the petitioner Sangh comes to know about such an incident, the Sangh invariably approaches this Court so as to see that grievances of the persons who are not literate or unable to approach this Court are duly ventilated. In the instant case, he has submitted that the police authorities had abused their powers and in violation of law laid down by the Apex Court of the country in the case of Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526, Shri Kalyansinh Parmar was handcuffed and paraded in public so as to insult him. It has been submitted by Shri Patel that legal and fundamental rights guaranteed to Shri Kalyansinh Parmar were flagrantly violated by the police personnel and, therefore, for redressal of grievances of Shri Kalyansinh Parmar the present petition was filed.

3. The facts as stated by Learned Advocate Shri Girish Patel are as under:-

4. Shri Kalyansinh Parmar is a resident of town Vallabhipur. He is a retired policeman engaged in agricultural activities. He is a poor man aged about 58 years and is suffering from tuberculosis.

5. It has been submitted by Shri Patel that on 21.8.1997, the day on which the incident had taken place, PSI Shri J.S. Yadav of Vallabhipur Police Station, in company of about four policemen, had gone near a tea stall where Shri Kalyansinh Parmar was having a cup of tea. One of the constables approached Shri Kalyansinh and told him that PSI, who was sitting in the jeep, wanted to talk to him. Thereupon Shri Kalyansinh went

near the jeep to see the PSI. As submitted by Ld. Advocate Shri Patel, Shri Kalyansinh was asked by the PSI to give names of persons dealing in liquor. The said question was put to him as Shri Kalyansinh was formerly working in police force and, therefore, the PSI presumed that Shri Kalyansinh must be knowing persons dealing in liquor in Vallabhipur. In reply to the said question, Shri Kalyansinh frankly told the PSI that he had no connection with anyone involved in liquor business and he did not know anyone who was dealing in liquor. As Shri Kalyansinh did not give any information to the PSI, the PSI was annoyed and he started abusing Shri Kalyansinh by grabbing his hair and he tried to dash head of Shri Kalyansinh on the bonnet of the jeep. As Shri Kalyansinh did not give any information, the PSI became wild and after taking a lathi from one of the constables who had accompanied him, started beating Kalyansinh mercilessly and in the process of beating with the lathi, Kalyansinh received very serious blows and he got his right hand fractured. It has been submitted by Learned Advocate Shri Patel that, in spite of the fact that Shri Kalyansinh's hand was fractured, the PSI did not spare him and he handcuffed Shri Kalyansinh and his upper arms were tied with a rope. Shri Kalyansinh was constrained to walk half-bent in Vallabhipur Town and with an intention to insult him, the PSI had cut hair of Shri Kalyansinh on public street.

6. Learned Advocate Shri Girish Patel has submitted that the above-referred behaviour of PSI Shri Yadav has violated legal and fundamental rights of Shri Kalyansinh and has also adversely affected human dignity. It has been submitted by Shri Patel that it was highly improper on the part of the PSI to behave in such a manner with an innocent person who did not name persons who were dealing in liquor. It has been submitted by Learned Advocate Shri Patel that when the PSI was behaving in the above-referred brutal manner, several persons had gathered and somebody had conveyed a message to the DSP, Bhavnagar about the said incident. In pursuance of the message received by the DSP, Dy. Superintendent of Police, in charge of Botad Division Shri Sevania and other police personnel had rushed to Vallabhipur but at the time when the said police personnel had arrived, Shri Kalyansinh had already been taken to police lock-up. When the DYSP made inquiry with regard to arrest of Shri Kalyansinh, PSI Shri Yadav submitted that Shri Kalyansinh was arrested in pursuance of an offence registered under provisions of Section 66(B) of the Prohibition Act.

7. Learned Advocate Shri Patel has submitted that as

facts with regard to the above-referred incident were made known to higher authorities, PSI Shri Yadav was transferred from Vallabhipur to another place but no other action was taken against him. It has also been submitted by Learned Advocate Shri Patel that as per his information in the past, on eight different occasions PSI Shri Yadav was placed under suspension and some criminal cases were also pending against him at the time when the incident in question had taken place.

8. In the above-referred circumstances, the petitioner Sangh has approached this Court with a prayer that action of the respondent police personnel of abusing, beating, parading Shri Kalyansinh after handcuffing him be declared illegal, unlawful and violative of provisions of Articles 14 and 21 of the Constitution of India. It has also been prayed that appropriate action should be taken against the concerned police personnel.

9. In pursuance of notice issued by this Court, learned AGP Shri Joshi has appeared for the government authorities. Looking to the facts and circumstances of the case, with consent of the learned advocates, the matter is finally heard today.

10. By an interim order dated 19.11.1997, this Court had directed the DSP, Bhavnagar, to file a detailed affidavit stating the progress of investigation made by the Crime Branch in the case registered against PSI Shri Yadav for causing the injuries to Shri Kalyansinh Parmar. In pursuance of the said direction, the DSP, Bhavnagar, has filed an affidavit stating that, in pursuance of the above-referred incident, an FIR had been filed at Vallabhipur Police Station which has been registered at C.R. No. 118/97 for offences punishable under Sections 323, 325, 504, 211 and 220 of the IPC against PSI Shri Yadav and three other policemen. It has also been stated in the affidavit that upon knowing about the incident in question, police officer Shri Sodhatar was directed to make necessary investigation and record statements of the concerned persons. It has also been stated that in the course of investigation, PSI Shri Yadav was arrested on 4.12.1997 but he was subsequently enlarged on bail. On 7.9.1997 PSI Shri Yadav was placed under suspension and his headquarter was fixed at Bhavnagar. PSI Shri Yadav was directed not to leave headquarter, that is, Bhavnagar City, without taking prior permission of the DSP, Bhavnagar. As a policeman was involved in the offences referred to hereinabove, the investigation was handed over to Shri D.L. Damor, Police Inspector, C.I.D., Crime

Branch, of Bhavnagar .

11. Thereafter, further affidavit was filed by the DSP on 19.1.1998 wherein it has been stated that chargesheet was filed against PSI Shri Yadav in the Court of the Judicial Magistrate (First Class), Vallabhipur, on 29.11.97 and it was also stated that the petitioner was transferred from District Bhavnagar to District Amreli on 3.12.97.

12. We have gone through relevant papers pertaining to the investigation made by police officer Shri Sodathar and we have also gone through the injury certificate issued by the medical officer of Sir T. General Hospital of Bhavnagar revealing details about the injuries inflicted upon Shri Kalyansinh. We are at pains to note that in spite of judgment delivered by the Hon'ble Supreme Court in the case of Prem Shankar Shukla (supra) directing the police personnel not to parade any person in public after roping him, PSI Shri Yadav had abused his powers and had beaten Shri Kalyansinh in a manner which would not befit a police officer. As criminal complaint has already been filed against Shri Yadav and the incident in question is a subject-matter of a criminal case referred to hereinabove, we do not desire to make any comment on the incident in question. However, looking to the facts of the case, we direct the respondent Government to award compensation of a sum of Rs. 10,000/- to Shri Kalyansinh Parmar as, due to the incident in question, Shri Parmar's hand was fractured. The sum so paid shall be recovered from PSI Shri Yadav or the person responsible for causing the injuries to Shri Kalyansinh as the entire incident has taken place on account of abuse of power by police personnel.

13. The sum of compensation which might be paid to Shri Kalyansinh Parmar shall be without prejudice to the rights of Shri Parmar for taking any civil or criminal proceedings against the concerned policeman. We also clarify that the facts stated hereinabove shall not be taken into account in any civil or criminal proceedings which might be initiated against Shri Yadav or any other policeman.

14. As appropriate actions are being taken against PSI Shri Yadav and other policemen, we do not think that anything further is required to be done by this Court at this stage. A criminal complaint has already been filed against them and PSI Shri Yadav has also been suspended and given posting in a different district so as to see that he does not tamper with the evidence or influence

witnesses. In the criminal case charge sheet has been filed on 29.11.97. By this time, we are sure that charge must have been framed. If charge has not been framed so far, we direct that the charge shall be framed by the appropriate court without any delay and the trial shall also be concluded without any delay.

15. In the circumstances, we dispose of this petition in view of the above-referred direction with regard to payment of compensation to Shri Kalyansingh Parmar. Rule is made absolute with no order as to costs.

(K. Sreedharan, C.J.)

(A.R. Dave, J.)

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